IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8846 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHAVIRSINH AJITSINH RANA

Versus

STATE OF GUJARAT

Appearance:
MS SUBHADRA G PATEL for Petitioner
MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 2.6.2000 passed against the petitioner by the Police Commissioner, Rajkot City detaining the petitioner under Sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985. On

2.6.2000 the petitioner was committed to the Jail at Surat and since then he is detained in Jail at Surat.

No reply to the petition has been filed.

The grounds of detention enclosed with the detention order show that solitary case registered against the petitioner is Criminal Case No.78/2000 dated 31.5.2000, at Taluka Police Station, Rajkot City under Bombay Prohibition Act. The petitioner is said to be a bootlegger and is engaged in the business of unauthorised liquor. On that basis detaining authority has found the petitioner's activities to be a breach of public order and it has been found that in order to prevent him from carrying on such activities, there is no other alternative but to detain him. In the grounds of detention it has also been mentioned that petitioner's activities have become a threat to the public order and the public health and it is also going to have serious effect on the public health.

The petitioner is said to be a bootlegger and he is engaged in carrying on unauthorised liquor business. All the allegations, as are levelled against the petitioner in the grounds of detention order, even if taken to be true may at the most constitute a case of breach of law and order, not that of breach of public order. Solitary case is the criminal case registered against the petitioner under Bombay Prohibition Act in May 2000. Law is settled that in such cases, bootlegging activity by itself does not constitute a case of threat to public order. Learned A.G.P. has referred to the case of K.S.Zala v. State of Gujarat, reported in 1999 (2) GLH 415 and has submitted that it is mentioned in the grounds of detention order that the petitioner's activities are injurious to the public health and, therefore, it is a case of breach of public order. After considering the case of K.S.Zala (Supra) the Division Bench of this Court in Letters Patent Appeal No.223/2000 decided on 22.8.2000 has already taken the view that the bald mention that activities are going to have adverse impact on the public health cannot be said to be a ground for breach of public order in absence of any cogent and credible material in support of the case of adverse effect on the public health. In the facts of the present case, no credible and cogent material germane to the question of public health has been pointed out and it is clear that there is no material to form such an opinion against the petitioner. It is at the most a case of breach of law and order and no case for breach of public

order.

For the reasons aforesaid, the impugned detention order dated 2.6.2000 passed by the Police Commissioner, Rajkot City, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner Mahavirsinh Ajitsinh Rana shall be released forthwith from Surat Jail where he is detained since 2.6.2000, in case he is not required in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)